

SUPREME COURT OF ARIZONA

| | | |
|---------------------------------|---|-------------------------|
| In the Matter of |) | Arizona Supreme Court |
| |) | No. R-17-0013 |
| RULES OF PROCEDURE FOR JUDICIAL |) | |
| REVIEW OF ADMINISTRATIVE |) | |
| DECISIONS |) | |
| |) | FILED 08/31/2017 |
| |) | |
| |) | |
| |) | |

**ORDER
AMENDING THE RULES OF PROCEDURE FOR JUDICIAL REVIEW OF
ADMINISTRATIVE DECISIONS**

A petition having been filed proposing to amend the Rules of Procedure for Judicial Review of Administrative Decisions in their entirety to make them clearer and more concise and to address procedural issues, and no opposition or comments having been received, upon consideration,

IT IS ORDERED that the existing Rules of Procedure for Judicial Review of Administrative Decisions are hereby abrogated and the attached, amended Rules of Procedure for Judicial Review of Administrative Decisions and Forms 1 through 9 are hereby substituted in their place, effective January 1, 2018.

DATED this 31st day of August, 2017.

/s/
SCOTT BALES
Chief Justice

Arizona Supreme Court R-17-0013

Page 2 of 20

TO:

Rule 28 Distribution

Lisa M Panahi

ATTACHMENT

Rule 1. Scope of Rules; Applicability of Other Rules; Construction

(a) Title and Scope. These are the Rules of Procedure for Judicial Review of Administrative Decisions. A rule may be cited as “JRAD Rule 00.” These rules govern the procedure in all appeals from final administrative decisions brought to the superior court pursuant to A.R.S. §§ 12–901 to –914.

(b) Applicability of Arizona Rules of Civil Procedure. Except as provided elsewhere in these rules, the Arizona Rules of Civil Procedure do not apply to proceedings held pursuant to A.R.S. §§ 12–901 to –914.

(c) Applicability of Local Rules of Practice. Unless inconsistent with these rules, the Local Rules of Practice for the superior court in the county in which the action for judicial review of an administrative decision is filed apply to proceedings brought pursuant to A.R.S. §§ 12–901 to –914.

(d) Construction. These rules should be used and interpreted by the courts and the parties to achieve the just, speedy, and inexpensive resolution of appeals.

Rule 2. Time Computation; Service

(a) Computation of Time. Rule 6(a), Ariz. R. Civ. P., applies to the computation of any period of time specified or allowed for proceedings subject to these rules.

(b) Enlargement of Time. The court for good cause shown may shorten or extend the time for doing any act required by these rules or by A.R.S. §§ 12–901 to –914, except the court may not extend the time for the filing of a notice of appeal.

(c) Service. Any party filing any document, after the filing of the Notice of Appeal, must serve that document on all parties pursuant to Rule 5, Ariz. R. Civ. P.

Rule 3. Stay of an Administrative Decision

(a) Motion for Stay Pending Appeal. A party may file with the clerk of the superior court a motion to stay a final administrative decision, in whole or in part, pending the final disposition of the appeal, pursuant to A.R.S. § 12–911. The motion for stay must be a separate filing from the notice of appeal required by A.R.S. § 12–904. The party filing the motion for stay must provide proper notice to the agency affected and all other parties to the proceeding before the agency. Form 3 is a template for the motion for stay.

(b) Standard for Issuance of Stay Pending Appeal. The superior court may grant the motion for stay pending appeal for good cause shown. The motion for stay must address the following:

1. The strong likelihood of success on the merits;
2. The irreparable harm if the stay is not granted;
3. The harm to the requesting party outweighs the harm to the party opposing the stay; and
4. Whether the public policy favors the granting of the stay.

(c) Bond on Appeal. A stay of an administrative decision may be entered in superior court with or without bond, except if otherwise provided by statute.

Rule 4. Administrative Appeal; Content and Timing

(a) Filing a Notice of Appeal. A party to a final administrative decision may take an appeal by filing a “Notice of Appeal for Judicial Review of Administrative Decision” with the clerk of the superior court as permitted by A.R.S. §§ 12–904 to –905. Form 1 is a template for the notice of appeal.

(b) Time for Filing a Notice of Appeal. A party must file a notice of appeal with the clerk of the superior court no later than 35 days from the date when a copy of the final administrative decision from which the party is appealing is served upon the party affected, unless the law provides a different time.

(c) Content of the Notice of Appeal. The notice of appeal must:

1. Include the caption of the case and the administrative agency case number;
2. Identify the party or parties filing the appeal;

3. Designate the final administrative decision from which the party is appealing, including the date of that decision;

4. State the findings and decision or part of the findings and decision sought to be reviewed;

5. State the issues presented for review.

6. Request a trial de novo, if desired, the grant of which is subject to A.R.S. § 12-910, and

7. Be signed by the attorney for the party that is taking the appeal, or by the party if the party has no attorney.

(d) Where To File a Notice of Appeal. The venue specified in the statute authorizing the appeal of the decision controls the venue for an appeal from a final administrative decision. If the venue is not specified, an appeal from a final administrative decision may be filed with the clerk of the superior court of any county in which any of the following conditions arise:

1. Where any part of the hearing or proceeding resulting in the decision of the administrative agency was held;

2. Where any part of the subject matter involved is situated; or

3. Where any part of the transaction giving rise to the proceedings before the administrative agency occurred.

(e) Service of the Notice of Appeal. A party must serve the Notice of Appeal pursuant to Rule 4, Ariz. R. Civ. P.

(f) Proof of Notice of the Commencement of the Appeal. Within 10 days after the party files the notice required by A.R.S. § 12-904(B), the party must file proof of the filing of that notice with the clerk of the superior court. Form 6 is a template of the notice of action.

Rule 5. Record on Appeal

(a) Composition of Record on Appeal and Transmission of Record on Appeal. In filing the record on appeal pursuant to A.R.S. § 12-909(B), the administrative agency must file with the record a document entitled “Certification of Record on Appeal” signed by the head of the agency or other person authorized by law. This certification must include an index of all materials contained in the record on appeal and must include certification that the materials included in the record on appeal are originals or accurate copies. Form 7 is a template of the certification of record on appeal.

(b) Confidential Treatment of the Administrative Record. All portions of the administrative record designated as confidential in proceedings before the agency retain that status unless otherwise ordered by the court. A party may request confidential treatment of any other portion of the record or to unseal any part of the record designated confidential.

(c) Copies to Parties. The administrative agency must serve on all parties a copy of the “Certification of Record on Appeal” filed with the clerk of the superior court.

(d) Preparation and Certification of Transcript. The transcript of the administrative hearing, or designated portions thereof, must be included in the record on appeal if requested by appellant in the notice of appeal or in writing filed by any other party within 10 days after that party is served with a notice of appeal.

1. A party requesting a transcript not already contained in the administrative record of a hearing stenographically reported by a court reporter must make satisfactory arrangements with the reporter for payment of the cost of the transcript. That party must file the original transcript with the superior court within 30 days of the request.

2. A party requesting a transcript not already contained in the administrative record of a hearing created by recording must obtain a copy of the tape recording from the agency that conducted the hearing and cause a written transcript to be prepared at the requesting party’s expense. The requesting party must file the transcript with the clerk of the superior court within 30 days of the request.

(e) Correction or Modification of the Record. On stipulation of the parties, if anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded. The parties must present all other questions about the form and content of the record to the superior court.

Rule 6. Time for Filing a Brief

(a) Time for Filing Appellate Briefs. Parties must file appellate briefs with the clerk of the superior court as follows:

1. Opening Brief. The appellant must file an opening brief within 45 days after service of the Certification of Record on Appeal.

2. Answering Brief. The appellee must file an answering brief within 45 days after service of appellant’s brief.

3. Reply Brief. The appellant may file a reply brief within 20 days after service of appellee’s brief.

(b) Consequences of Failure to Timely File Appellate Brief. If an appellant does not timely file an opening brief, the court, on motion of a party or upon its own motion may dismiss the appeal. If appellee does not timely file an answering brief, the court may deem the appeal submitted for a decision upon the opening brief and the record.

Rule 7. Contents of Briefs

(a) Appellant's Opening Brief. An appellant's opening brief must set forth, under the following headings and in the following order, all of the items listed below:

1. A short "introduction" if desired.
2. A "statement of the case" indicating briefly and concisely the nature of the case, the course of the proceedings and the decision of the administrative agency from which the appeal is taken and the basis of the court's jurisdiction. The statement of the case must include appropriate references to the record.
3. A "statement of the facts" that are relevant to the issues presented for review, with appropriate references to the record. A party may combine a statement of facts with the statement of the case.
4. A "statement of the issues" presented for review. The statement of issues presented for review includes every subsidiary issue fairly comprised within the statement.
5. An "argument" that must contain appellant's contentions concerning each issue presented for review, with supporting reasons for each contention and with citations of legal authorities and appropriate references to the portions of the record on which appellant relies. The argument may include a summary.
6. A short "conclusion" stating the precise relief sought and a request for attorney's fees, if applicable.

(b) Appellee's Answering Brief. The appellee's answering brief must conform to the requirements of subparagraph (a), except that it does not need to include a statement of the case, a statement of the facts, or a statement of the issues, unless the appellee finds the appellant's statements to be insufficient or incorrect.

(c) Appellant's Reply Brief. Appellant may file a reply brief. The reply must be confined strictly to rebuttal of points made in the appellee's answering brief.

Rule 8. Length of Briefs

(a) Opening briefs and answering briefs must not exceed 14,000 words.

(b) Reply briefs must not exceed 7,000 words.

(c) Every brief must be accompanied by a certificate that confirms compliance with the applicable word limit. A party preparing a certificate of compliance may rely on the word count of the word processing system used to prepare the brief if it counts the required words including any footnotes. Form 8 is a template of the certification of word count.

Rule 9. Oral Argument

A party may request oral argument by stating on the first page of the party's brief immediately below the title of the brief "(Oral Argument Requested)", or by filing, no later than 10 days after the time for filing the reply brief, a separate instrument requesting oral argument. The court may limit the time for oral argument.

Rule 10. Admission of Exhibits and Testimony Not Offered During Administrative Hearing; Requirement, Content, Timing and Effect of Motion

(a) Motion Required. Any party seeking to introduce exhibits or testimony (or both) not offered during the administrative hearing must file a written motion with the clerk of the superior court.

(b) Contents of Motion. The motion must identify the evidence sought to be introduced and set forth the appropriate legal authority in support of its admission as required by A.R.S. § 12-910. The moving party also must address the application of A.R.S. § 12-911(A)(7), relating to a remand to the agency, to the party's motion. Form 9 is a template of the motion to introduce additional evidence.

(c) Time for Filing Motion. The motion must be filed within 30 days after the filing of the notice of appeal.

(d) Response to Motion. Any party may file a response to the motion within 10 days after service of the motion.

(e) Effect of Motion. The filing of a motion under this rule does not extend the time for filing briefs as set forth in Rule 6 of these rules

Rule 11. Trial De Novo

(a) Motion Required. A party who has timely demanded a trial de novo must file a written motion with the clerk of the superior court.

(b) Contents of Motion. The motion must explain the grounds for the demand and set forth the appropriate legal authority in support of the demand.

(c) Time for Filing Motion. The motion must be filed within 30 days after the filing of the demand for a trial de novo.

(d) Response to Motion. Any party may file a response to the motion within 10 days after service of the motion.

(e) Effect of Motion. The filing of the motion under this rule does not extend the time for filing briefs as set forth in Rule 6 of these rules.

Rule 12. Motions for Reconsideration

A party seeking reconsideration of a ruling of the superior court may file a motion for reconsideration with the clerk of the superior court. Any motion for reconsideration, and the process for resolving motions for reconsideration, is governed by Rule 7.1, Ariz. R. Civ. P. A motion for reconsideration will not extend the time within which a notice of appeal must be filed from the decision of the superior court.

Form 1 – Notice of Appeal of Administrative Decision

A.R.S. §§ 12–901(2), 12–904, 12–906, 12–909(A),
12–914, JRAD Rule 4

Distribution:

Clerk of Superior Court – Original

Each Appellee – 1 (served as provided
in Rule 4, Ariz. R. Civ. P.)

Time to File: Within 35 days from the date when a
copy of the final administrative decision, as defined
in A.R.S. § 12–901(2), sought to be reviewed is
served upon the party affected.

Attorney or Party Name

State Bar No. (if any)

Law Firm Name (if any)

Complete Mailing Address

Telephone Number

Email Address

Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA
_____ COUNTY

| | | |
|---------------|---|-------------------------|
| _____ |) | |
| Appellant(s), |) | Case No. _____ |
| |) | |
| vs. |) | NOTICE OF APPEAL FOR |
| _____ |) | JUDICIAL REVIEW OF |
| |) | ADMINISTRATIVE DECISION |
| Appellee(s). |) | (Administrative Review) |
| _____ |) | |

Pursuant to A.R.S. § 12–904, [name of Appellant(s)] appeals from the final administrative decision [name of final decision] issued by [name of agency] on [date] in cause no. _____ [agency docket number or case number].

Pursuant to JRAD Rule 4, the following items are included in this Notice of Appeal:

1. The caption of the case and the administrative agency case number are _____.
2. The party or parties filing the appeal are as follows: _____.
3. The final administrative decision from which the party is appealing is _____,
which was issued on _____.
4. The findings and decision or part of the findings and decision sought to be reviewed is as follows _____.

5. The issues presented for review are as follows: _____.

6. A request for trial de novo, is/is not requested.

[Appellant requests an award of attorney's fees incurred pursuant to (specify substantive authority that authorizes the fee award).]

DATED this _day of _____, 20_____

Signature of Attorney or
Self-Represented Party

The following parties appeared before the agency:

Form 2 – Notice of Appearance

A.R.S. §§ 12-907, 12-909(B), 12-914

Distribution:

Clerk of Superior Court – Original

Appellant – 1

Other parties – 1

Time to File: Within 20 days after service of
Notice of Appeal upon Appellee

Attorney or Party Name

State Bar No. (if any)

Law Firm Name (if any)

Complete Mailing Address

Telephone Number

Email Address

Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA

_____ COUNTY

| | | |
|------------|---|----------------------|
| _____ |) | |
| Appellant, |) | Case No. _____ |
| |) | |
| vs. |) | NOTICE OF APPEARANCE |
| _____ |) | |
| |) | |
| Appellee. |) | |
| _____ |) | |

NOTICE is given of the appearance of [attorney name] with the [name of law firm or agency] as counsel for Appellee [name of appellee].

DATED this _day of _____, 20____

Signature of Attorney

Copy of the foregoing [mailed/delivered]

this ____ day of _____, 20__, to:

[Attorney or Party Name]

by: _____

Form 3 – Motion for Stay

A.R.S. § 12-911(A)(1)

Distribution:

Clerk of Superior Court – Original

Judge – 1

Each party – 1

Attorney or Party Name

State Bar No. (if any)

Law Firm Name (if any)

Complete Mailing Address

Telephone Number

Email Address

Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA

_____ COUNTY

| | | |
|-------|---|--------------------|
| _____ |) | |
| |) | Appellant, |
| |) | |
| vs. |) | Case No. _____ |
| _____ |) | |
| |) | MOTION FOR STAY OF |
| |) | AGENCY DECISION |
| |) | |
| |) | Appellee. |
| _____ |) | |

Appellant moves the Court pursuant to A.R.S. § 12-911(A)(1) and JRAD Rule 3 for a stay of decision of [name of agency] of [date of entry] until final disposition of this action for review of that decision. This motion is made for the reasons stated in the attached Memorandum of Points and Authorities.

DATED this _day of _____, 20_____

Signature of Attorney or
Self-Represented Party

Continued

Form 3 *Continued*

MEMORANDUM OF POINTS AND AUTHORITIES [State procedural background, facts and argument. Pursuant to Rule 3(b), the memorandum must address 1. A strong likelihood of success on the merits; 2. Irreparable harm if the stay is not granted; 3. That the harm to the requesting party outweighs the harm to the party opposing the stay; and 4. That the public policy favors the granting of the stay.]

Signature of Attorney or
Self-Represented Party

Copy of the foregoing [mailed/delivered]
this ____ day of _____, 20__, to:

[Attorney or Party Name]

by: _____

Form 4 – Order Denying Stay

A.R.S. § 12-911(A)(1)

Distribution:

Each party – 1

SUPERIOR COURT OF ARIZONA
_____ COUNTY

| | | |
|-----------|---|--------------------|
| _____ |) | |
| |) | Case No. _____ |
| |) | |
| vs. |) | ORDER DENYING STAY |
| _____ |) | |
| |) | |
| |) | |
| Appellee. |) | |
| _____ |) | |

The Court having considered Appellant's Motion for Stay of Agency Decision in the above-entitled action (and the memorandum filed in support),

IT IS ORDERED denying Appellant's Motion for the following reasons:

Dated: _____

Judge of the Superior Court

Form 5 – Order Staying Agency Decision

A.R.S. § 12-911(A)(1)

Distribution:

Each party – 1

SUPERIOR COURT OF ARIZONA
_____ COUNTY

| | | |
|------------|---|-----------------|
| _____ |) | |
| Appellant, |) | Case No. _____ |
| |) | |
| vs. |) | ORDER STAYING |
| _____ |) | AGENCY DECISION |
| |) | |
| Appellee. |) | |
| _____ |) | |

On motion of Appellant and good cause having been shown,

IT IS ORDERED that the decision of [name of agency] of [date of entry] is stayed insofar as it affects Appellant and that the Appellee is restrained from enforcing that decision against Appellant until final disposition of this action or until further order of this Court.

[IT IS FURTHER ORDERED that this Order is conditioned upon the filing with the clerk of this Court by Appellant of a bond pursuant to A.R.S. § 12-911(A)(1) in the amount of \$_____ to secure Appellee against all damages or loss caused by this Order and for which Appellee may be lawfully entitled to recover compensation.]

Dated: _____

Judge of the Superior Court

Form 6 – Notice of Action

A.R.S. § 12-904(B), JRAD Rule 4(f)

Distribution:

Clerk of Superior Court – Original

Administrative Agency – 1

Each party – 1

Attorney or Party Name

State Bar No. (if any)

Law Firm Name (if any)

Complete Mailing Address

Telephone Number

Email Address

Attorney for _____ (party name)

OFFICE OF ADMINISTRATIVE HEARINGS OR
NAME OF AGENCY

| | | |
|-------|---|------------------------------|
| _____ |) | |
| |) | Appellant, |
| |) | |
| vs. |) | Case No. _____ |
| _____ |) | |
| |) | NOTICE OF ACTION |
| |) | (COMMENCEMENT OF THE APPEAL) |
| |) | |
| |) | Appellee. |
| _____ |) | |

[Appellant] gives notice pursuant to A.R.S. § 12–904(B) that Appellant has filed an action pursuant to the Judicial Review of Administrative Decisions Act, A.R.S. §§ 12–901 to – 914 to appeal the decision of [name of agency] dated [date entered].

DATED this _____ day of _____, 20____

Signature of Attorney or
Self-Represented Party

Copy of the foregoing [mailed/delivered]
this _____ day of _____, 20____, to:

[Attorney or Party Name]

by: _____

Form 7: Certification of Record on Appeal

A.R.S. § 12-904(B)

Distribution:

Clerk of Superior Court – Original

Judge – 1

Administrative Agency – 1

Each party – 1

Attorney or Party Name

State Bar No. (if any)

Law Firm Name (if any)

Complete Mailing Address

Telephone Number

Email Address

Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA

_____ COUNTY

| | | |
|-------|---|------------------|
| _____ |) | |
| |) | Appellant, |
| |) | |
| vs. |) | Case No. _____ |
| _____ |) | |
| |) | CERTIFICATION OF |
| |) | RECORD ON APPEAL |
| |) | |
| |) | Appellee. |
| _____ |) | |

I am the agency head [name of agency] or duly authorized representative, and I certify that:

1. Attached to this Certification is an index of all materials contained in the record on appeal.

2. The materials included in the record on appeal are originals or accurate copies.

The information provided in this Certification is true and complete.

DATED this _____ day of _____, 20____

Signature of Agency Head or
Duly-Authorized Representative

Copy of the foregoing [mailed/delivered]
this _____ day of _____, 20__, to:

[Attorney or Party Name]

by: _____

Form 8: Certification of Word Count
To be included with each brief filed pursuant to JRAD Rule 8

A.R.S. § 12-904(B)

The undersigned certifies that the brief/motion to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains _____ words.

The document to which this Certificate is attached does not/does exceed the word limit that is set by JRAD Rule 8 as applicable.

The information provided in this Certification is true and complete.

DATED this _____ day of _____, 20_____

Signature of Attorney or
Self-Represented Party

Form 9: Motion To Introduce Additional Evidence

A.R.S. § 12-910(A), JRAD Rule 10

Distribution:

Clerk of Superior Court – Original

Judge – 1

Administrative Agency – 1

Each party – 1

Attorney or Party Name

State Bar No. (if any)

Law Firm Name (if any)

Mailing Address

City, State, Zip Code

Telephone Number

Email Address

Attorney for _____ (party name)

SUPERIOR COURT OF ARIZONA
_____ COUNTY

| | | |
|------------|---|---------------------|
| _____ |) | |
| Appellant, |) | Case No. _____ |
| |) | |
| vs. |) | MOTION TO INTRODUCE |
| _____ |) | ADDITIONAL EVIDENCE |
| |) | |
| Appellee. |) | |
| _____ |) | |

[Appellant/Appellee] moves the Court pursuant to A.R.S. § 12-910(A) to introduce exhibits and testimony not offered during the Administrative Hearing in addition to the relevant and admissible exhibits and testimony contained in the record of [name of agency] filed in this Court. The additional evidence sought to be introduced is described and the reasons why this Motion may be granted are stated in the attached Memorandum of Points and Authorities.

DATED this _____ day of _____, 20____

Signature of Attorney or
Self-Represented Party

Copy of the foregoing [mailed/delivered]
this _____ day of _____, 20____, to:

[Attorney or Party Name]

by: _____